Petition

81-1775

No.

Supreme Court, U.S.
FILED
MAR 25 1982
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MARTHA S. DOUGLAS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SECOND DISTRICT COURT OF APPEALS OF FLORIDA

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QUESTIONS PRESENTED

1. Are the rights guaranteed to a citizen to assistance of counsel, under the 6th Amendment, to the Constitution of the United States, violated by the use of the citizens legal counsel as a police agent and prosecution witness against the citizen?

2. It is a violation of the due process requirements of the 5th Amendment to the Constitution of the United States, to admit tape recordings of a citizen's conversations as evidence against her without having them properly authenticated by the person who made them?

LIST OF PARTIES

MARTHA S. DOUGLAS
THEODORE J. DELISI
CHARLES J. DELISI
RICHARD DELISI
FRANCIS D. HEALEY
RONALD BRION
GORDON BOWMAN DARBY
JOSEPH W. DAVIS
GEORGE E. DEMELLO
JOHN C. CALI
PABLO A. CABAU
JOHN GERARD BESERANY
CHRISTOPHER SPRANCE
RICHARD R. GIGLER
ROMERO MARALUNDI
MICHAEL HERBERT GIGLER
FRANK C. CALI
HARRY M. HILL
PETER M. BURT
ROY A. BROWN

DONALD W. DOUGLAS
CHARLES R. SMALLEY
THOMAS S. VAUGHN
RICHARD D. POWERS
PAUL PATOUNIS
PHILIP F. KEIDAISH
JOHN A. MOORE
HERBERT H. HAYES

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No.

MARTHA S. DOUGLAS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SECOND DISTRICT COURT OF APPEALS OF FLORIDA

MARTHA S. DOUGLAS petitions for a writ of certiorari to review the judgment of the Second District Court of Appeal of Florida in this case.

OPINIONS BELOW

The orders of the Second District Court of Appeal of Florida affirming the trial court and denying Petition for Rehearing.

JURISDICTION

Jurisdiction in this court is involved under 28 U.S.C. § 1257(3), Petitioner having asserted below and asserting

here deprivation of rights guaranteed by the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION AMENDMENT V.

Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION AMENDMENT VI.

Jury trial for crimes, and procedural rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for ob-

taining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

Petitioner, MARTHA DOUGLAS is a native and resident of Hardee County, Florida. Petitioner was convicted of Violation of the Florida Racketeering Influence and Corrupt Organization Act, Criminal Conspiracy to Violate the Florida Racketeering Influenced and Corrupt Organization Act, Trafficking in Cannabis, Criminal Conspiracy to Traffic in Cannabis, Two Counts of Perjury (R-76-78) and sentenced to serve twenty (20) years in the State Penitentiary (three years mandatory) and fined $25,000.00. Petitioner had no prior record of *any* sort and had not been involved in drug smuggling prior to the episode which led to her conviction.

All other defendants below involved in this case were longtime drug smugglers (R-96-100, 1263). Some were given immunity (R-1407-1408, 1431-1433), others allowed to plead to lesser offenses *without* mandatory sentences *AND* the balance failed to show for trial and estreated bonds totaling 1.7 million dollars. Although a capias was issued for each defendant it is a stated fact that the State of Florida will make no effort to locate and return those Defendants who absconded.

Subsequent to the imposition of the horrendous sentence on the Appellants (R-76-78, 80-81) it became common knowledge that the balance of these defendants would not appear for trial.

On January 22, 1980, during the night-time hours a C-54 aircraft landed in Hardee County, Florida, on property owned by Glen and Martha Douglas. The aircraft was

carrying approximately fifteen thousand (15,000) pounds of marijuana, (R-1044) and had such trouble landing that it alerted a wildlife officer (R-1042), who in turn notified the Hardee County Sheriff's Office (R-1043).

Law enforcement officers converged on the landing site and all of the person involved fled the scene on foot, (R-1042-1043). The plane and cargo was abandoned.

The following persons were ultimately Indicted or Informed against, to-wit: THEODORE J. DELISI, CHARLES J. DELISI, RICHARD DELISI, FRANCIS D. HEALEY, RONALD BRION, GORDON BOWMAN DARBY, JOSEPH W. DAVIS, GEORGE E. DEMELLO, JOHN C. CALI, PABLO A. CABAU, JOHN GERARD BESERANY, CHRISTOPHER SPRANCE, RICHARD R. GIGLER, ROMERO MARALUNDI, MICHAEL HERBERT GIGLER, FRANK C. CALI, HARRY M. HILL, PETER M. BURT, ROY A. BROWN, MARTHA S. DOUGLAS, DONALD W. DOUGLAS, CHARLES R. SMALLEY, THOMAS S. VAUGHN, RICHARD D. POWERS, PAUL PATOUNIS, PHILIP F. KEIDAISH, JOHN A. MOORE, HERBERT H. HAYES. Deals were made by the following Defendant, to-wit: FRANCIS D. HEALEY, JOSEPH W. DAVIS, GEORGE E. DEMELLO, PABLO A. CABU, RICHARD D. POWERS, RICHARD R. GIGLER, MICHAEL HERBERT GIGLER, HARRY M. HILL involving little or no time in jail and virtually no minimum mandatory sentences.

The long-time, big income smugglers forfeited huge bonds and will, probably, never faced trial in the instant charges.

Petitioner went to trial on December 8, 1980 (R-1029), and was convicted and sentenced as follows:

Count III of the First Amended Direct Information – fifteen (15) years State Prison and a fine of $10,000.00; Count IV of First Amended Direct Information – fifteen (15) years (three years mandatory) and a fine of $25,000.00; Count II of Indictment – fifteen (15) years State Prison and a fine of $10,000.00 (all the foregoing counts are to run concurrent). Count III of Indictment – five (5) years State Prison and a fine of $5,000.00; Count IV of Indictment – five (5) years State Prison and a fine of $5,000.00 (These two counts are to run concurrent and consecutively with other counts).

A co-defendant, ROY BROWN, nephew of Martha Douglas, met with Paul Pettie, "Teddy" Delisi and Frank Healey in Hardee County in July, 1979 for the purpose of showing Delisi and Healey some investment properties in the County, (R-1559-1560). During this trip the quartet met Petitioner on property owned by Petitioner and her husband (R-1564-1576).

First conversation was for the leasing of the property for development or hunting purposes (R-1559, 1577) but it evolved into the construction of an airstrip upon which a plane load of marijuana could land, (R-1576). Brown showed the property on two other occasions but subsequent to those showings he attempted to withdraw from participation (R-1578).

Pettie is a lawyer, a member of the Florida Bar, a former Assistant City Solicitor, Assistant State Attorney and Miami Judge (R-1571-1574). He was a long time lawyer for and business associate with Brown relative to real property investments and improvements (R-704-705). Brown relied upon him as an attorney during this entire proceeding, up to and including the time of the trial of this cause (R-705).

Martha Douglas had two or more meetings with co-defendant, Frank Healey prior to the plane landing (R-1339, 1605) and one meeting subsequent. Brown received $25,000.00 from Pettie, to be paid to Martha Douglas (R-1350, 1355), kept $10,000.00 for himself and gave $15,000.00 to her (R-2031).

Within a few days of the capture of the aircraft it was traced to Pettie, who was contacted by Officers of the Florida Department of Law Enforcement (R-1145-1146). Pettie immediately "rolled over" and became an informant for F.D.L.E. (R-1809).

Pettie made contact with the pilot of the aircraft, one James Wilson (R-1504), and had a number of taped conversations with Wilson (R-1585). During one of these conversations Wilson admitted making $4,300,000.00 from drug smuggling during the preceeding four (4) years (R-1584). Both Wilson and Pettie were given immunity (R-1584), although Pettie admitted long and deep involvement with the drug smugglers (R-1472).

Between the later part of January and the early part of July Pettie made numerous contacts with Petitioner. Some of these contacts were taped, others were not. On each occasion there was ample time within which to secure an intercept warrant but *none* was secured (R-1856).

The tape recordings *AND* transcripts of the tape recordings were introduced at the trial, for the jury's consideration. The transcripts were prepared by Special Agent Guthrie, F.D.L.E. (R-1869). The transcripts were *NOT* authenticated by Pettie, as a matter of fact changes were made in the first transcripts, those furnished on discovery, by Special Agent Guthrie during the trial (R-1863-1864, 1869, 1877).

Co-defendant Brown called Pettie, in response to Pettie's calls, during the period of investigation (between January and July) from his home telephone. Brown had been subpoenaed to appear and give testimony before the Assistant State Attorney investigating this case and the Hardee County Grand Jury. Portions of the conversations were of an attorney/client relationship and those portions were suppressed by the trial judge (R-735), leaving only those portions of the conversations dealing with the instant case for the jury's consideration. It is Petitioner's contention that the entire conversation were conducted under the attorney/client privilege.

Petitioner similarly made numerous calls to Pettie in response to contacts by him. These were similarly recorded on tape (R-2000, 2003, 2007, 2011).

In addition, Martha Douglas met with Pettie at a motel. This conversation was taped by officers Guthrie and Wolfe in an adjoining room (R-1879) and was introduced over the objection of the defense. The officers eavesdropped on the conversation during its taping.

Petitioner was subpoenaed to testify before the Assistant State Attorney. Petitioner contacted Pettie prior to appearing and received advice (R-714). She also contacted Pettie prior to her appearance before the Hardee County Grand Jury and again received advice (R-714). Martha Douglas was convicted of perjury as to each appearance.

Martha Douglas looked upon Pettie as her attorney (R-676-677) and sought his advice as an attorney. During this time Pettie was working as an informant for F.D.L.E. and set Petitioner up. Even the agents of F.D.L.E. were concerned over the Attorney/Client relationship and brought this to Pettie's attention (R-725)

Many conversation that Pettie had with Petitioner that might have been indicative of the esteem in which Appellant held Pettie were "not" taped. Pettie seemed to be the sole judge of what conversations were taped and which tapes were turned over to F.D.L.E. (R-1850, 1856-1857, 1870-1871, 1879, 2147). This "selective" taping or delivery of tapes had a chilling effect upon the Justice of this case, particularly in the light of Pettie's obvious lack of credibility and his unethical conduct as an attorney. Pettie is still practicing law.

REASONS FOR GRANTING THE WRIT

Undoubtedly the most fundamental rights guaranteed by the Constitution of the United States is the right to the assistance of counsel to prepare one's defense. Without this right, it would be virtually impossible for a citizen to take advantage of the other rights, privileges and immunities. The field of law is far too complex and pervasive for anyone but a specialist, or person who makes it their vocation, to understand it or utilize it effectively. Therefore, when the right to counsel is denied, or intruded upon, as it was in the case at bar, it is of monumental concern.

The other question, the improper authentication of tape recordings, is an evidentiary matter resting upon a violation of due process, guaranteed by the Fifth Amendment, and made applicable to the states by the Fourteenth Amendment. If evidence is admitted without a proper foundation, or showing of authenticity, convictions which are not based upon substantial evidence will result.

1.

A quotation of Justice Brander's contained in *Miranda v. Arizona,* 384 U.S. 436, 16 L.Ed.2d 694 (1966), succinctly states the danger inherent in allowing the activity countenanced in this case:

> To declare that in the administration of the criminal law the end justifies the means . . . would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face", at 480.

The Court also held in *Miranda, supra,* that the rights to assistance of counsel and protection against self-incrimination under the Fifth and Sixth Amendments were secured for ages to come and designed to approach immortality as nearly as human institutions can approach it.

In the instant case, the police effectively denied Petitioner's rights under both amendments by making the man she viewed as her attorney an active part of their efforts to obtain incriminating evidence against her, even instructing him as to what he should get her to say on tape to build their case.

The police activity here amounts to gross misconduct, and should not even require a showing of prejudice for reversal, *Black v. U.S.,* 385 U.S. 26, 17 L.Ed.2d 26 (1966). The situation is analogous to that of *Caldwell v. U.S.,* 205 F.2d 879 (D.C. Cir. 1953), wherein a prosecution agent maneuvered himself into the employ of the defense counsel. The Court held that such activity invalidated the conviction.

Similarly, in *Coplon v. U.S.,* 191 F.2d 749 (D.C. Cir. 1951), *cert. dnd.,* 342 U.S. 926 (1951), the Court there held that interception of telephone communications be-

tween the Defendant and her counsel mandated a new trial, no matter how overwhelming the evidence of guilt. In the instant case, there was no evidence of wrongdoing by Petitioner except the taped statements elicited by Paul Pettie, whom she viewed as her attorney, and the statements she made to the Grand Jury pursuant to Pettie's instructions.

That the governmental misconduct is applicable to the case at bar is borne out by *U.S. v. Valencia,* 541 F.2d 618 (6th Cir. 1976). There the defense counsel's secretary was a government informant, and as in the instant case, the attorney was suspected of being involved in the illegal activity. The Court held that the right to effective assistance of counsel attached at the time the investigative process became accusatory.

In the case at hand, Petitioner consulted with the attorney, Paul Pettie, at numerous times, asked his advice about what to do when contacted by the State Attorney's Office, and tried to get word to him when she was arrested.

There can be no doubt that the use by the police of the man Petitioner viewed as her attorney violated her rights under both the Fifth and Sixth Amendments to the Constitution of the United States.

2.

Yes. The requisite factors to establish the authenticity and accuracy of sound recordings are set out in *Monroe v. U.S.*, 234 F.2d 49 (D.C. Cir. 1956), *cert. den.*, 352 U.S. 873, 1 L.Ed.2d 76 (1956), *reh. dnd.*, 352 U.S. 937, 1 L.Ed.2d 170 (1956). The Court held that the operator of the recording device must testify as to its operation, his method of operating it, the accuracy of the recordings,

and the identites of the persons speaking. In accord is *U.S. v. Slade,* 627 F.2d 293 (D.C. Cir. 1980), *cert den.,* 449 U.S. 1034 (1981).

In the case at hand, the operator, Paul Pettie, only testified that he made the recordings introduced, and that he was alone when most of them were made. The police agent testified that he told Pettie how to do it, and that the machine operated properly. However, he could not testify that the recordings were even made on the machine he gave Pettie.

In *Chapman v. U.S.,* 271 F.2d 593 (5th Cir. 1959), *cert. dnd.,* 362 U.S. 928, 4 L.Ed.2d 746 (1969), the admission of a recording was approved because the making of the recording was safeguarded by the officers at every step. That is completely opposite to the situation at bar, because the police did not even know when the recordings were made, or if they had been altered in any way. Pettie was anxious to provide the police with whatever incriminating evidence he could because he was trying to gain immunity for himself and his brother. There were no safeguards to insure that the recordings were accurate, and there was no authentication.

U.S. v. McMillan, 508 F.2d 101 (8th Cir. 1974), *cert. dnd.* 421 U.S. 916, 43 L.Ed.2d 782 (1974), adopts the criteria of *Monroe supra,* for the foundation, authentication and verification of accuracy of tapes, and sets out the requirements to be shown:

> (1) That the recording device was capable of taping the conversation now offered in evidence.
>
> (2) That the operator of the device was competent to operate the device.
>
> (3) That the recording is authentic and correct.

(4) That changes, additions, or deletions have not been made in the recording.

(5) That the recording has been preserved in a manner that is shown to the Court.

(6) That the speakers are identified.

(7) That the conversation elicited was made voluntarily and in good faith, without any kind of inducement," at 104.

The recordings were approved in *McMillan, supra,* because the police were present when the recordings were made and listened to the conversation as it occurred.

Again, there is no such showing in the case at bar. The police have no knowledge as to the accuracy of the conversation, or whether there were any alterations in the recordings, or if inducements were made. They did not hear any of the tapes until at least a couple of days after they were made. They could easily have been altered to divert attention from the real criminals who were Pettie's employers.

There can be no doubt that a miscarriage of justice has been educed by this immolation of the due process guarantees appended to the Constitution of the United States as a prophylactic of the abuses which occurred under English law.

CONCLUSION

Based upon the foregoing arguments and authorities, MARTHA S. DOUGLAS respectfully requests an order granting the petition for writ of certiorari so that this Court may answer the important questions set out above and eliminate the conflict in decisions.

Respectfully submitted,

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Attorney for Petitioner

Appendix

APPENDIX A

In The Circuit Court Of The
Tenth Judicial Curcuit
IN AND FOR HARDEE COUNTY, FLORIDA

STATE OF FLORIDA — January Term, 1981

-vs- — Case No. 80-185

MARTHA SKITKA DOUGLAS
Defendant

JUDGMENT AND SENTENCE

The Defendant, MARTHA SKITKA DOUGLAS, being personally before this Court, represented by JACK EDMUND, his attorney of record, having

been tried and found guilty of the crime of
entered a plea of guilty to the crime of entered a plea of nolo contendere to the crime of

SEE ATTACHED SHEET

and the Court having inquired and given the Defendant an opportunity to be heard and show cause why he should not be adjudged guilty and sentenced as provided by law, including an opportunity to offer matters in mitigation of sentence, and no cause being shown, it is thereupon:

ORDERED that the Defendant, MARTHA SKITKA DOUGLAS is hereby adjudicated guilty of the crime of SEE ATTACHED SHEET. It is the sentence of the law that said Defendant be committed to the custody of the Department of Offender Rehabilitation of the State of Florida, to be imprisoned for the term of _____ years

in the institution in the State Correctional System to which said Department may cause you to be confined. (The Court recommends that you be confined at _____ type institution.)

IT IS FURTHER ORDERED that you shall be allowed 42 DAYS credit for such time as you have been incarcerated prior to the imposition of this sentence for this offense. (No credit should be allowed if the Defendant is already under sentence or if credit has been previously given for another offense. Strike if not applicable.)

IT IS FURTHER ORDERED that this sentence is (concurrent) (consecutive) with the sentence imposed for the crime of SEE ATTACHED SHEET in Case 80-185, HARDEE County. (Strike if not applicable.)

IT IS FURTHER ORDERED that the Sheriff of Hardee County, Florida, is hereby ordered and directed to deliver said Defendant to the Department of Offender Rehabilitation together with a copy of this Judgment and Sentence. It is further ordered and adjudged that said Defendant shall pay the sum of One Dollar ($1.00) pursuant to Section 943.24 Florida Statutes.

CIRCUIT COURT, HARDEE COUNTY,
WEDNESDAY, JANUARY 21, 1981, 8:30 A.M.
Judge Oliver L. Green, Jr.

STATE OF FLORIDA

-vs-

CASE No. 80-185

MARTHA SKITKA DOUGLAS

COUNT III OF FIRST AMENDED DIRECT INFORMATION

VIOLATION OF THE FLORIDA RACKETEERING INFLUENCED AND CORRUPT ORGANIZATION ACT
F.S. 943.462 (3)

COUNT IV OF FIRST AMENDED DIRECT INFORMATION

CRIMINAL CONSPIRACY TO VIOLATE THE FLORIDA RACKETEERING INFLUENCED AND CORRUPT ORGANIZATION ACT
F.S. 943.462 (4)

ALSO: FOUND GUILTY OF THESE CHARGES FROM THE INDICTMENT

F.S.893.135 (1) (a)	COUNT I OF INDICTMENT: TRAFFICKING IN CANNABIS
F.S.777.04 (3)	COUNT II OF INDICTMENT: CRIMINAL CONSPIRACY TO TRAFFICK IN CANNABIS
F.S.837.02	COUNT III OF INDICTMENT: P E R J U R Y
F.S.837.02	COUNT IV OF INDICTMENT: P E R J U R Y

Having been adjudged to be guilty of these counts on December 15, 1980, it is the judgment of the court and the sentence of the law that your sentence now be:

COUNT III OF FIRST AMENDED DIRECT INFORMATION: You are sentenced to fifteen (15) years in the State Prison and pay a fine of 10,000.00

COUNT IV OF FIRST AMENDED DIRECT INFORMATION: You are sentenced to fifteen (15) years in the State Prison and pay a fine of $10,000.00

COUNT I OF INDICTMENT: You are sentenced to fifteen (15) years (three years Mandatory) and pay a fine of $25,000.00

COURT II OF INDICTMENT: You are sentenced to fifteen (15) years in the State Prison and pay a fine of $10,000.00.

ALL OF THE ABOVE COUNTS ARE TO RUN CONCURRENT.

COUNT III OF INDICTMENT: You are sentenced to five (5) years in State Prison and pay a fine of $5,000.00.

COUNT IV OF INDICTMENT: You are sentenced to five (5) years in State Prison and pay a fine of $5,000.00.

THESE TWO COUNTS ARE TO RUN CONCURRENT AND CONSECUTIVELY WITH OTHER COUNTS. THESE BEING COUNTS III, IV OF THE INFORMATION AND COUNTS I AND II OF THE INDICTMENT.

The Defendant in Open Court was advised of his right to appeal from this Judgment and Sentence within thirty days from this date, and the Defendant's entitlement to the assistance of counsel in taking said appeal upon a showing

that said Defendant was entitled to an attorney at the expense of the State.

The following are the fingerprints of the above-named defendant,

MARTHA SKITKA DOUGLAS

(FINGERPRINTS)

DONE AND ORDERED in Open Court at HARDEE County, Florida, this 15th day of December, 1980, A.D. I HEREBY CERTIFY that the above and foregoing fingerprints on this Judgment and Sentence are the fingerprints of the Defendant, MARTHA SKITKA DOUGLAS, and that they were placed thereon by said Defendant in my presence in Open Court this date.

OLIVER L. GREEN JR. Judge

ACTUAL SENTENCING WAS ON WEDNESDAY, JANUARY 21, 1981

STATE OF FLORIDA
COUNTY OF HARDEE

This is to certify that the foregoing is a true and correct copy of the Document on file in my office.
Witness my hand and official seal this 5 day of February 1981.

COLEMON W. BEST,
Clerk County Court
By H. Mitchell D.C.

FILED FOR RECORD. THIS 21 DAY OF JAN. A.D. 1981 AT 8:30 O'CLOCK A.M. AND RECORDED IN VOL. 14 AT PAGE 406 OF C.C.M. RECORDED AND VERIFIED.
COLEMON W. BEST, Clerk Circuit Court

By H. Mitchell D.C.
Hardee County, Florida

APPENDIX B

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MARTHA DOUGLAS and DON DOUGLAS, Appellants,	]	
v.	]	CASE NOS.
	]	81-157 and 81-158
STATE OF FLORIDA, Appellee.	]	CONSOLIDATED

Opinion filed December 18, 1981.

Appeals from the Circuit Court for Hardee County; Oliver Green, Judge.

Jack T. Edmund, Bartow, for Appellants.

Jim Smith, Attorney General, Tallahassee, and David T. Weisbrod, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed.

SCHEB, C.J., and CAMPBELL and SCHOONOVER, JJ., Concur.

APPENDIX C

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT

MARTHA DOUGLAS and DON DOUGLAS,	:	
Appellants,	:	
vs.	:	CASE NOS. 81-157 and 81-158
STATE OF FLORIDA,	:	
Appellee.	:	

PETITION FOR REHEARING

COME NOW the Appellants, MARTHA DOUGLAS and DON DOUGLAS, by and through their undersigned attorney and file this Petition and offer as support:

1. The court rendered its decision so quickly that the law and facts argued must have been overlooked or misapprehended.

2. The holding of the Florida Supreme Court in *State v. Sarmiento*, 397 So.2d 643 (Fla. 1981) was directly applicable. The police used an agent, who was Appellants' attorney, to place calls to Appellants homes and inveigled incriminating statements over the phone. The only factual difference from *Sarmiento* is that there the agent went into the home wearing a bug, but the intrusion is no less if a

phone call is placed to a home. People have a right to feel secure in their homes and the government should not intrude without the detached consideration of a magistrate that the otherwise unlawful entry is justified.

3. The court apparently misapprehended or overlooked the fact that the statements made by the Appellants to the State Attorney and the grand jury were in accordance with instructions as to what to say, given to them by the F.D.L.E. agent Pettie, whom they regarded as their attorney.

4. The entire case was tainted by the use of Pettie, whom Appellants legitimately regarded as their attorney, as an agent for the F.D.L.E. He advised Appellants about their case and their rights and counseled them as to what they should say and do. This was a flagrant violation of Appellants attorney-client privilege for confidential communications. No court should countenance such activity by police.

5. The court misapprehended or overlooked the fact that the recordings introduced into evidence were not authenticated by the person who made them, Pettie. Pettie had free rein to record or not as he chose, and was only instructed by Guthrie as to how to operate the recorder. There was no assurance that Pettie did not "doctor" the tapes, or what else was discussed between he and Appellants. The government only presented the tapes that strengthened their case, without proper

authentication, and no indicia of trustworthiness that the tapes had not been tampered with. There well could have been conversations which would have provided irrefutable proof that the Douglases regarded Pettie as their attorney. The police were not present when the recordings were made and Pettie had sole custody of them until he turned them over to Wolfe.

6. A true and fair decision in this case could not be rendered without considering it *in pari materia* with the appeal of Roy Allen Brown, a Co-Defendant. The same law and facts are applicable in both cases. It would seem that by rendering a decision as to the Douglas' at this early date has possibly prejudiced the case of Mr. Brown. By reverse, if the court should decide to reverse Mr. Brown's conviction, then the Douglas' will have suffered a gross miscarriage of justice.

WHEREFORE, Appellants pray this court will grant a rehearing in this cause to allow oral argument expanding upon the foregoing argument.

RESPECTFULLY SUBMITTED this 30th day of December, A.D., 1981.

JACK T. EDMUND of
EDMUND, McDANIEL & HOLMES
Post Office Box 226
Bartow, Florida 33830
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to the Attorney General's Office, Park Trammell Building, Room 804, 1313 Tampa Street, Tampa, Florida 33602, by U.S. Mail, this 35th day of December, A.D., 1981.

JACK T. EDMUND, ESQUIRE

APPENDIX D

IN THE SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA
January 26, 1982

MARTHA DOUGLAS and DON DOUGLAS,	]	
Appellants,	]	
v.	]	CASE NOS.
	]	81-157
STATE OF FLORIDA,	]	81-158
Appellee.	]	

Counsel for appellants having filed a petition for rehearing in the above-styled cause, upon consideration, it is

ORDERED that said petition be and the same is hereby denied.

A TRUE COPY
TEST:

/s/
CLERK, DISTRICT COURT OF APPEAL
SECOND DISTRICT

cc: Jack T. Edmund
David T. Weisbrod

Jan 28, 1982